

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JEFFREY A. KELLY,

Plaintiff,

v.

1:12-CV-1344

(MAD/RFT)

**ULSTER COUNTY, NY; HEALTH ALLIANCE OF
THE HUDSON VALLEY, INC.,**

Defendants.

APPEARANCES:

OF COUNSEL:

JEFFREY A. KELLY
164 Colonial Drive
Kingston, New York 12401
Plaintiff Pro Se

MAE A. D'AGOSTINO, U. S. DISTRICT JUDGE

ORDER

On September 18, 2012, the Court received for filing a *pro se* second amended complaint and *in forma pauperis* application. (Dkt. No. 5). In a Report–Recommendation and Order dated October 16, 2012, United States Magistrate Judge Randolph F. Treece found that plaintiff's complaint was subject to dismissal for failure to comply with Federal Rules of Civil Procedure 8 and 10. Magistrate Judge Treece concluded:

Since plaintiff's Second Amended Complaint plainly does not comply with the requirements of the [] pleading rules, and in its current form, the pleading fails to state a cause of action, we recommend that dismissal is appropriate. However, in light of his *pro se* status, we alternatively recommend that the District Judge provide plaintiff with an opportunity to amend his pleading to cure deficiencies outlined

above, with the warning that failure to submit an amended pleading will result in dismissal of the action.

(Dkt. No. 6).

On November 1, 2012, plaintiff filed a “Response to Oct. 16, 2012 Report, Order and Recommendation by Magistrate Treece”. In the response, plaintiff states, “while [I] have no ‘objection’ per se, to the document referenced, [I have] some observations”. (Dkt. No. 8). On the same day, plaintiff filed his Third Amended Complaint. (Dkt. No. 9). In light of the fact that plaintiff has failed to file specific objections to the Report-Recommendation, the Court reviews the Report-Recommendation for clear error or manifest injustice. *See Brown v. Peters*, 1997 WL 599355, at *2-3 (N.D.N.Y.) *aff’d without op.*, 175 F.3d 1007 (2d Cir. 1999). After the appropriate review, “the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1).

In his response, plaintiff fails to object to any portion of the Report-Recommendation as an error in the application of the law or facts. Indeed, plaintiff does not object to Magistrate Judge’s recommendations and has complied with the directives set forth therein with the timely filing of an Amended Complaint. In essence, plaintiff’s response “apologizes” for the form of the prior complaints but “rejects” Magistrate Judge Treece’s use of the word “befuddlement”. This Court finds no error in Magistrate Judge Treece’s characterization of the prior pleadings. Plaintiff also states that “Mag. Treece referenced the matter of *pro se* litigants having the right to apply for counsel” and states that Magistrate Judge Treece previously denied his request for appointment of counsel. To that end, plaintiff states, “that plaintiff may find such a process worthy to try again under the circumstances that another judge is involved or that Mag. Treece decides to recuse himself from the instant matter toward encouraging such a process”. The Court has reviewed the

Report-Recommendation and Order and finds no reference to any application for appointment of counsel or denial of any such request. Thus, this issue is not properly before this Court.

Plaintiff filed a Third Amended Complaint and notes, "plaintiff hopes the current form has cured the prior deficiencies in sufficient manner so as to allow the instant matter to proceed, and he thanks the Court for its suggestions as to form as outlined in [] the report".

The Court has conducted a careful review of all of the papers herein, including the Magistrate Judge's Report-Recommendation.

IT IS HEREBY

ORDERED that the Report-Recommendation is hereby **REJECTED IN PART AND ADOPTED IN PART**; it is further

ORDERED that the portion of the Report-Recommendation is rejected insofar as it recommends dismissing plaintiff's action; it is further

ORDERED that the Report-Recommendation is otherwise accepted and adopted; it is further

ORDERED, that in the Clerk of the Court shall return the file to Magistrate Judge Treece for further review of plaintiff's Third Amended Complaint; it is further

ORDERED, that the Clerk of the Court shall serve a copy of this Order upon plaintiff in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: November 28, 2012
Albany, New York


Mae A. D'Agostino
U.S. District Judge